

**Supporting Statement for the Disclosure Requirements in Connection with
Regulation CC to Implement the Expedited Funds Availability Act
(Reg CC; OMB No. 7100-0235)**

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, without revision, the Disclosure Requirements in Connection with Regulation CC to Implement the Expedited Funds Availability Act (EFAA).¹ The Board is required to renew these requirements every three years pursuant to the Paperwork Reduction Act of 1995 (PRA), which classifies regulations such as Regulation CC as “required information collections.”² A notice of the renewal was published, on July 16, 2002, in the *Federal Register* for public comment.³

Regulation CC requires depository institutions to make funds deposited in transaction accounts available within specified time periods, disclose their availability policies to customers, and begin accruing interest on such deposits promptly. The disclosures are intended to alert customers that their ability to use deposited funds may be delayed, prevent unintentional (and costly) overdrafts, and allow customers to compare the policies of different institutions before deciding at which institution to deposit funds. The regulation also requires notice to the depository bank and to a customer of nonpayment of a check. Model disclosure forms, clauses, and notices are appended to the regulation to ease compliance.

Although Regulation CC applies to all depository institutions, not just state member banks, the Federal Reserve accounts for the paperwork burden only for the 1,271 state member banks and uninsured state branches and agencies of foreign banks that are deemed “respondents” for purposes of the PRA. The total amount of annual burden is estimated to be 331,630 hours for state member banks and uninsured state branches and agencies of foreign banks.

Background and Justification

The EFAA requires depository institutions to provide customers and potential customers specific written notices and disclosures on the occurrence of specific events, described in more detail below. All of the notice and disclosure requirements of Regulation CC are found expressly in the Act, except for the notice of a delay under a case-by-case hold policy and the notice of a returned check, discussed below.

¹ The EFAA was enacted in 1987 and is codified at 12 U.S.C. § 4008 *et seq.* Regulation CC is located at 12 C.F.R. Part 229.

² 44 U.S.C. § 3501 *et seq.*

³ The collection of information under Regulation CC is assigned OMB No. 7100-0235 for purposes of the PRA.

As required by the Act, the Federal Reserve has published model disclosure forms and clauses to facilitate compliance with these requirements. The Act specifically provides that institutions are not required to use these model forms and clauses. An institution that uses one of the model forms appropriately is deemed to be in compliance with the Act's disclosure requirements.

Description of Information Collection

Disclosure of specific availability policy upon initial deposit (sections 229.16 and 229.17)

Before accepting a deposit to open a new transaction account, institutions must provide written disclosures stating when deposited funds generally will be available for withdrawal, referred to as a specific availability-policy disclosure. The disclosure must reflect the availability policy followed by the institution in most cases, that is, as to most transaction accounts and most deposits into those accounts. The disclosure must include, to the extent applicable, a description of:

- the categories of deposits or checks the institution uses when it delays availability, how to determine into which category a check or deposit falls, and when each category of check or deposit is available for withdrawal;
- any of the exceptions permitted by Regulation CC to the availability requirements of the regulation that may be invoked by the institution;
- any case-by-case policy of delaying availability longer than the time periods stated in the specific availability policy, if the specific availability policy makes funds available for withdrawal sooner than required by Regulation CC;
- a description of how to differentiate between proprietary and nonproprietary automatic teller machines (ATMs) if the institution's availability policy differs between the two.

When an institution receives a written request by mail to open an account and the request includes a deposit, the institution may open the account, but must mail the disclosures no later than the next business day following the banking day on which the deposit was received. When a telephone request is made to open an account and includes a request to transfer funds from another account to make the initial deposit, the initial disclosures must be mailed no later than the next business day following the banking day on which the request was made.

Disclosure of specific availability policy to any person upon request (sections 229.16 and 229.18(d))

An institution must provide the specific availability-policy disclosure, as described above, to any person who makes an oral or written request regarding the policy.

Case-by-case hold notice (section 229.16(c))

If an institution has a policy of generally making funds available for withdrawal sooner than required under Regulation CC, but delaying availability on a case-by-case basis, the customer must receive not only advance notice of the policy (as described above), but also notice each time a delay is imposed. The notice must include the date of deposit, the amount being delayed, and the date funds will be available for withdrawal. If the notice is not provided at the time of deposit, it must be mailed or delivered no later than the first business day following the banking day of the deposit.

Notice of exceptions to hold policy (section 229.13(g))

Regulation CC permits institutions to invoke certain exceptions to the availability schedules required by the regulation. Whenever an institution invokes such an exception, it must notify the customer in writing. (Special rules apply to exceptions pertaining to large dollar deposits and redeposited checks into nonconsumer accounts, as well as an exception pertaining to repeated overdrafts.) The notice must include the date of deposit, the amount being delayed, the reason the exception was invoked, and when funds will be available for withdrawal. If the notice is not provided at the time of deposit, it must be mailed or delivered by the later of: the first business day following the banking day of the deposit, or the first business day following the day the bank becomes aware of the facts upon which the exception hold is based.

Notice on preprinted deposit slips (section 229.18(a))

The preprinted deposit slip notice must inform the customer, on the face of the deposit slip, that deposits may not be available for immediate withdrawal. The burden for this requirement is negligible.

Notice posted where consumers make deposits (section 229.18(b)) and Notice at ATMs (section 229.18(c))

A bank must post conspicuously in each location where consumers may make deposits a notice of its funds availability policy for consumer accounts. The notice must be posted so that consumers are likely to see it prior to making a deposit. An institution must also ensure that a notice is posted at all ATMs accepting deposits for the institution that ATM deposits may not be available for immediate withdrawal. Such notice may be posted on a sign, on the screen of the ATM, or included on the deposit envelopes provided at the ATM.

Notice of changes in policy (section 229.18(e))

An institution is required to send consumer account holders notice of changes in its availability policy at least thirty days before the change becomes effective. However, where a change in policy results in faster availability, the notice may be sent no later than thirty days after the change.

If an institution provides its customers with a list of ATMs in its availability policy (to fulfill the requirement that it explain its availability policy for proprietary and nonproprietary ATMs), it must update the list annually if any changes occurred during the year.

Notice of nonpayment (section 229.33(a) and (d))

Notification to depositary banks. If an institution on which a check is drawn in an amount of \$2,500 or more determines not to pay the check, the institution must notify the depositary institution by 4:00 p.m. on the second business day after the day of presentment.

Notification to customer. If the depositary bank receives a returned check or notice of nonpayment, regardless of the amount, it must send notice to its customer generally by midnight of the banking day following the banking day on which it received the returned check or notice (a longer time than may be deemed reasonable in some cases). For purposes of the Paperwork Reduction Act, this requirement is considered not to cause the bank additional burden because, were the requirement not to exist, banks presumably would nonetheless provide a similar notification to customers in the usual and customary course of their business.

Time Schedule for Information Collection

Information collection pursuant to Regulation CC is triggered by specific events, and disclosures must be provided to consumers within the time periods established by the law and regulation. There is no reporting form associated with the requirements of Regulation CC; disclosures or notifications, pertaining to a particular transaction or consumer account, are not publicly available. Model disclosure forms, clauses, and notices are appended to the regulation to ease compliance.

Legal Status

The Board's Legal Division has determined that the Expedited Funds Availability Act, as amended, authorizes the Board to issue regulations to carry out the provisions of the Act (12 U.S.C. § 4008). Because the Federal Reserve does not collect any information, no issue of confidentiality arises. The disclosure of information to consumers with regard to the availability of funds is available to the public.

Consultation Outside the Agency

There has been no consultation outside the Federal Reserve System.

Estimate of Respondent Burden

The estimate of the burden per response (i.e., per instance of disclosure) caused by a particular notice or disclosure requirement depends on several factors, including whether the notice is machine-generated and whether it is customer-specific. The notices given at account opening and upon request and the notices posted where consumers make deposits are disclosures concerning the institution's policy. They are machine-generated and are not customer-specific; thus the burden per response is minimal. The notice of changes in policy (including the annual notice updating the ATM list, if necessary) is not customer-specific, but likely requires more time to prepare; therefore, the burden per response is greater than for other notices. Notices given when a bank invokes a case-by-case hold or an exception permitted by the regulation are customer-specific; therefore the burden per response associated with these notices is slightly greater. The notice of nonpayment is also customer-specific; however, it is machine-generated. Therefore, the burden per response associated with this notice is less than the burden per response associated with other customer-specific notices.

For purposes of the PRA, no paperwork burden is associated with the recordkeeping requirement of Regulation CC. Section 229.21(g) requires depository institutions to "retain records of compliance" for no less than two years but does not specify the kind of records that must be retained for this purpose.

The following table reflects the burden estimate of the Federal Reserve System for the 1,271 depository institutions under its supervision. The total annual burden for this information collection is 331,630 hours. This burden represents 5.7 percent of total Federal Reserve paperwork burden.

	<i>Number of respondents</i>	<i>Estimated annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Initial notice or upon request	1,271	420	1 minute	8,897
Case-by-case hold notice	1,271	2,150	3 minutes	136,633
Notice of exceptions	1,271	740	3 minutes	47,027
Notice posted where consumers make deposits (including at ATMs)	1,271	1	15 minutes	318
Annual notice of new ATMs	1,271	1	5 hours	6,355
Notice of changes in policy	20	1	20 hours	400
Notice of nonpayment to depository bank	1,271	6,491	1 minute	132,000
<i>total</i>				331,630

Based on an hourly cost of \$20, the annual cost to the public is estimated to be \$6,632,600.

Sensitive Questions

This collection of information contains no questions of a sensitive nature, as defined by OMB guidelines.

Estimate of Cost to the Federal Reserve System

Since the Federal Reserve does not collect any information, the cost to the Federal Reserve System is negligible.